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09/600,021	07/07/2000	Philippe J. Goix	A-69293/AJT	6641

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EXAMINER

EVANS, FANNIE L

ART UNIT

PAPER NUMBER

2877

DATE MAILED: 11/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/600,021

Applicant(s)

GOIX, PHILIPPE J.

Examiner

F. L. Evans

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-21, 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12-21, 24 and 25 is/are rejected.
- 7) ☒ Claim(s) 10 and 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on July 7, 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: .

**The Preliminary Amendment**

The preliminary amendment filed on July 7, 2002 has been entered.

**The Information Disclosure Statement**

The prior art cited by applicant has been considered.

**Claim Rejections - 35 USC § 112**

The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 25 is rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The lack of an antecedent for "the ingestion rate" bridging lines 2 and 2 of claim 25 renders the claim indefinite. Correction is required.

**Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 8, 9 and 14-21 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Tanaka et al (JP 5-312811).

Tanaka et al disclose a device for detecting a tagged microparticle in a fluid comprising a capillary tube 31, fluid delivery system, a source of electromagnetic radiation (laser 36) for

projecting a beam of electromagnetic radiation of predetermined size into the capillary tube, and a detection device (42) to detect fluorescent light. Applicant's attention is directed to the Figs. 1-3 of Tanaka et al and the two English language abstracts.

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2-7 and 24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tanaka et al (JP 5-312811).

Tanaka et al disclose a device for detecting a microparticle comprising the components claimed by applicant. See the preceding rejection of claims 1, 8, 9 and 14-21. The nature of the microparticle detected by the device would obviously have been a matter of choice of the user.

Claim 12 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Tanaka et al (JP 5-312811) in view of Narang et al (US 6,020,209).

Tanaka et al disclose a device for detecting a microparticle comprising essentially all of the components claimed by applicant except the syringe pump. See the rejection of claims 1, 8, 9 and 14-21.

Narang et al disclose the use of a syringe pump to supply fluid to a capillary. Applicant's attention is directed to Narang et al in its entirety with particular attention directed to lines 6-8 of column 12.

At the time the invention was made, it would have been obvious to one with ordinary skill in the art to use a syringe pump to deliver the fluid of Tanaka et al to the capillary tube (31) because it was well known to deliver fluid to a capillary tube using such a pump as evidenced by the disclosure of Narang et al..

Claim 13 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Tanaka et al (JP 5-312811) in view of Renberg et al (US 5,842,150).

Tanaka et al disclose a device for detecting a microparticle comprising essentially all of the components claimed by applicant except the peristaltic pump. See the rejection of claims 1, 8, 9 and 14-21.

Renberg et al disclose the use of a peristaltic pump to supply fluid to a capillary. Applicant's attention is directed to Renberg et al in its entirety with particular attention directed to lines 7-10 in column 8.

At the time the invention was made, it would have been obvious to one with ordinary skill in the art to use a peristaltic pump to deliver the fluid of Tanaka et al to the capillary tube (31) because it was well known to deliver fluid to a capillary tube using such a pump as evidenced by the disclosure of Renberg et al..

**Allowable Subject Matter**

Claims 10 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

**Fax/Telephone Numbers**

Papers related to this application may be submitted to Technology Center 2800 by

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facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The fax number is (703) 308-7722.


If applicant wishes to send a fax containing a Proposed Amendment for discussion during either a personal interview or a telephone interview then the fax should:

- 1) Contain either the statement "**DRAFT**" or "**PROPOSED AMENDMENT**" on the Fax Cover Sheet; and
- 2) Should be unsigned by the attorney or agent.

This will ensure that the amendment will not be entered into the application and will be forwarded to the examiner as quickly as possible.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to the examiner whose telephone number is (703) 308-4805. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G. Font, can be reached on (703) 308-4881. The TC Receptionist's telephone number is (703) 308-0956.

Any other inquiry of a technical nature, and all inquiries of a general nature including those relating to the status of an application should be directed to TC 2800 Customer Service Office whose telephone number is (703) 306-3329.

  
**F. L. EVANS**  
**PRIMARY EXAMINER**  
**ART UNIT 2877**

file  
November 18, 2002